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ALEXANDER L. STEVAS,
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-2318

STATE OF FLORIDA,

Petitioner,

vs.

CONSTANTINO CASAL and
OMAR GARCIA,

Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

REPLY BRIEF OF PETITIONER

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SUMMARY

The warrantless search of the San Rafael was justified under at least three exceptions to the Fourth Amendment warrant requirement. The search was incident to a lawful arrest, New York v. Belton, 453 U.S. 454 (1981); a "Carroll" exception United States v. Ross, ___ U.S.___, 72 L.Ed.2d 572 (1982); and constituted a valid "inspection", United States v. Martinez-Fuerte, 428 U.S. 543 (1976) and Delaware v. Prouse, 440 U.S. 648 (1979).

A. Search Incident To Arrest

Respondents have avoided Petitioner's argument, misapprehended the issue, and misconstrued the facts. Without

discussing the applicability of New York v. Belton, supra, they have blindly argued that "... the Martinez-Fuerte case is therefor inappropriate to this consideration," and reason that ". . . if a search were to be considered as incidental to the arrest, the appropriate area for such a search would probably be in the cockpit of the vessel, but surely not in the forward hold." (Brief of Respondents p. 29).

The facts as set forth by the Florida Supreme Court in State v. Casal, 410 So.2d 153 (Fla. 1982) are the historical facts. (They are not in harmony with Respondents' skewed version.) The Court found that once given leave to board the San Rafael, Officer Soli accompanied by Respondents went to the cabin to look for registration papers.

She asked to look in the icebox as part of her inspection and was told that would be fine. Based on what she saw in the icebox and prior statements made by Respondents, she then sought permission to look into the forward hold. Captain Garcia asked whether she had a search warrant and Officer Walker said they did not need one since they were not conducting a search. Respondents were then placed under arrest for failure to have registration papers on board and at that point Garcia spontaneously said "there was no need to go further and that the boat was loaded with grass." State v. Casal, 410 So.2d at 153. Miranda warning were read and Garcia then confirmed that marijuana was on board. He then assisted Officer Soli in opening the forward hatch where several bales of marijuana were found.

In Belton, 453 U.S. at 460 the "workable rule" announced validated the scope of the search sub judice. Since the propriety of Respondents' arrests was never specifically questioned, the search of the hold immediately following the custodial arrest was justified. Michigan v. DeFillippo, 443 U.S. 31 (1979); Chimel v. California, 395 U.S. 752 (1969).

B. "Carroll Exception"

Respondents dispute the applicability of this Court's decision in Carroll v. United States, 267 U.S. 132 (1925) arguing that no probable cause existed to justify the warrantless search. Respondents contend without discussing the impact of United States v. Ross, supra, that the facts leading up to

and including Garcia's statements against penal interest were insufficient to establish the requisite probable cause.

Respondents seemingly contend that since no probable cause existed at the time of the initial stop, no probable cause could have developed regardless of what occurred aboard the San Rafael.

Once on board, Garcia's volunteered statements against penal interest provided the requisite probable cause to search as surely as the strong aroma of marijuana or marijuana in plain view. United States v. Clark, 664 F.2d 1174 (11th Cir. 1981); Texas v. White, 423 U.S. 67 (1975); Michigan v. Thomas, __ U.S.____, 102 S.Ct. 2079 (1982).

C. Inspection "Search"

Respondents argue that the "search" can not be justified as an administrative inspection because Camara v. Municipal Court, 387 U.S. 523 (1967) and Marshall v. Barlow's Inc., 436 U.S. 307 (1978) "both involved administrative inspections authorized by statute. In the case at bar the search was prohibited by statute." (Respondent's Brief p. 32) Respondents are incorrect.

Section 371.58 Fla.Stat. (1977) authorizes safety inspections for all boats "when the owner or operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this part has occurred or

is occurring." Section 371.041 Fla. Stat. (1977) requires all motorboats to be registered and Section 371.051(5) Fla. Stat. (1977) requires such registration to be aboard and available. Section 371.65(5) Fla.Stat. (1977) impose a misdemeanor penalty for not having a current registration.

Officer Soli and Officer Walker, Marine Patrol officers, had the right to inspect the San Rafael, first, because permission was granted to board and second, because Respondents could not produce registration papers, a clear violation of Section 371.051(5) Fla.Stat. (1977).

Respondents completely ignore this Court's decision in Donovan v. Dewey, 452

U.S. 594 (1981) which balanced the protected Fourth Amendment rights of a proprietor of commercial property against the government's need to develop "legislative schemes authorizing warrantless administrative searches of commercial property. . ." 452 U.S. at 598.

Where, as here, the need is paramount to protect the boating and fishing industries of Florida, the legislative scheme authorizing warrantless administration searches pursuant to Section 371.058 Fla.Stat. (1977) does not impermissibly infringe on Respondents' Fourth Amendment rights. See United States v. Raub, 637 F.2d 1205 (9th Cir. 1980); United States v. Watson, 678 F.2d 765 (9th Cir. 1982); United States v.

Hilton, 619 F.2d 127 (1st Cir. 1980); United States v. DeWeese, 632 F.2d 1267 (5th Cir. 1980); United States v. Clark, supra. 664 F.2d at 1175; United States v. Freeman, 660 F.2d 1030 (5th Cir. 1981); United States v. Goldfine, 538 F.2d 815 (9th Cir. 1976); United States v. Prendergast, 585 F.2d 69 (3d Cir. 1978); United States v. Arra, 630 F.2d 836 (1st Cir. 1980); United States v. Hayes, 653 F.2d 8 (1st Cir. 1981); United States v. Demanett, 629 F.2d 862 (3d Cir. 1980), cert. den. 450 U.S. 910 (1981); and Scott v. United States, 436 U.S. 128 (1978).

D. Other Issues

Respondents contrary to Rule 19.5, Rules of the Court, have argued alternative claims without filing the requisite

cross-petition. Respondents advance a reply to the validity of the warrantless search in Argument IV of their brief. The others, Arguments I through III, and Argument V. either are not properly before the Court or fail to state a cognizable claim which is "of sufficient general importance to justify the granting of review." [1]

1. The record is void of any evidence that Respondents filed a cross-petition challenging the validity of the initial stop of the San Rafael. The Florida Supreme Court in State v. Casal, 410 So.2d 152 (Fla. 1982) specifically found the initial stop to be valid. Pursuant to United States v. Raines, 362 U.S. 17, 27 n. 7 (1960); Mills v. Electric Auto Lite Co., 396 U.S. 375, 381 n. 4 (1970); Federal Energy Comm. v. Algonquin S.N.G. Inc, 426 U.S. 548, 560 n. 11 (1976), Respondents were required to file a timely cross-petition challenging the propriety of the initial stop and satisfy all requirements respecting an appeal as to the portion of the decision rendered adverse to them.

See United States v. Raines, 362 U.S. 17, 27 n. 7 (1960); Mills v. Electric Auto Lite Co. 396 U.S. 375, 381 n. 4 (1970); Federal Energy Comm. v. Algonquin S.N.G., Inc., 426 U.S. 548, 560 n. 11 (1976) and R. Stern and E. Gressman, Supreme Court Practice, 447-487 (5th ed. 1978).

Only a cursory analysis of Respondents' arguments has been undertaken. Argument in response to Respondents' Arguments I through III and Argument V

Moreover, certain arguments presented suffer vitality in that they are being argued for the first time, Cardinale v. Louisiana, 394 U.S. 437 (1969); or are barred pursuant to Wainwright v. Stone, 414 U.S. 21 (1973).

is made only assuming arguendo that this Court preliminarily review same despite their infirmities.

I. The Florida Marine Patrol's Initial Stop Of the San Rafael Was Valid.

Citing to Delaware v. Prouse, supra, and United States v. Piner, 608 F.2d 358 (9th Cir. 1979) Respondents take issue with the Florida Supreme Court's holding in State v. Casal, supra at 410 So.2d 155, that the initial stop was not an impermissible intrusion of their Fourth Amendment rights. The Court held:

> ". . .the state's interest in random stopping and brief detention of motorboats for the limited purpose of checking fishing permits, registration certificate and safety equipment outweighs a person's

> interest in being complete ly free from such limited intrusion. In light of the absence of less restrictive alternatives which would accomplish the state's goals, spot checks of motorboats are not unreasonable under the Fourth Amendment. The district court erred in holding that State Marine officers must have proba- ble cause to stop a vessel for the limited purposes discussed above."
> 410 So.2d at 155

The Court recognized that this Court in Delaware v. Prouse, supra did not preclude development of a spot check system and further observed that "the Court went so far as to suggest the possibility of setting up roadblocks where all traffic is stopped." 410 So.2d 155. See also United States v. Martinez-Fuerte, supra.

In United States v. Watson, supra, distinguishing United States v. Piner, supra, (relied upon by Respondents), the Ninth Circuit Court noted:

> "The intrusion must be measured in terms of both "'[the] objective intrusion--the stop itself, the questioning, and the visual inspection--. . . [and] the subjective intrusion--the generating of concern or even fright on the part of lawful travelers--. . .'" Prouse, 440 U.S. at 656,. . . . The governmental interest, on the other hand, must be evaluated in light of "alternative mechanisms available, both those in use and those that might be adopted, "to accomplish the legitimate government objectives. Prouse, 440 U.S. at 659, 99 S.Ct. at 1399."
>
> 678 F.2d at 767-768.

In setting forth this balancing test the Court rejected its previous decision in Piner, finding that in Watson a similarly circumstanced case, the intrusion was minimal and the government's interest great.[2]

Respondents' argument that the Marine Patrol officers had no authority to stop the San Rafael is ill-conceived. The facts reject Respondents' contention that there was no "articulable and reasonable evidence of registration and only

[2] While the initial stop is not properly before the Court, it should be noted that this issue is before the Court in United States v. Villamonte-Marquez, Case No. 81-1350 set for oral argument February 23, 1983. The question presented concerns the validity, under the Fourth Amendment, of Customs' statutorily authorized practice of boarding vessels on inland waters, in the absence a reasonable suspicion of a violation of law, to check the vessel's documentation.

suspicion that the vessel" was "not registered." (Respondents Brief p. 13). Indeed, Respondents could not produce any evidence of registration and only tendered tax receipts and other unidentified "documentation". The Ninth Circuit in Watson, supra, in response to a similar contention held:

> "Defendants have not shown any feasible, less intrusive means for policing compliance with safety and documentations regulations. A requirement that the Coast Guard have a founded suspicion of non-compliance before boarding would completely frustrate Coast Guard efforts to enforce compliance, simply because most documentation and safety violations cannot be detected without boarding. . . ."
>
> 678 F.2d at 772.

The Court concluded that "the modest Fourth Amendment interests implicated by the stop and boarding in this case are outweighed by the government's strong interests in securing compliance with document and safety regulations." 678 F.2d at 773.[3]

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[3]Likewise the Court in United States v. Watson, supra found a pretext argument to be wanting. Citing to a host of cases the Court held:

> ". . . We assume that the administrative plan which led to the stop of the GLOBE TROTTER was motivated partly by suspicion of drug smuggling.
>
> However, the stop and search had an independent administrative justification, and did not exceed in scope what was permissible under that administrative justification. Therefore, we need not consider any criminal enforcement interest the Coast Guard may have had." 678 F.2d at 771.

II. The Florida Marine Patrol Was Prohibited By Statute From Searching The San Rafael.

Respondents for the first time argue that the San Rafael was a "documented vessel" and therefore not subject to registration pursuant to Section 371.131, Fla.Stat. (1977).

This argument is totally barred from consideration in that 1) the validity of the stop is not before the court and 2) this argument has never been tendered prior to said brief. Pursuant to Cardinale v. Louisiana, 394 U.S. 437 (1969), Respondents are barred from relying on same.[4]

[4]Moreover, the record does not support Respondents contention that the San Rafael had a valid marine document issued by the United States Bureau of Customs. The only references to document paper was

Respondents assert that the State's statutes do not authorize and sanction safety equipment checks is totally erroneous. See Section 371.58, Fla.Stat. (1977). Wainwright v. Stone, 414 U.S. 21 (1973).

III. Whether There Was Consent To Search

Although the Florida Supreme Court in State v. Casal, supra concluded ". . . consent was freely given to board the

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made by the Marine officers who testified that in response to a request for registration papers, Respondents tendered tax receipt and "documentation paper for the vessel" which did not have either Respondents' name on them. (A-15-16, 55). Even assuming documentation paper were presented, a valid marine documentation does not vitiate the State's right to require safety equipment or compliance with the State's fishing and boating regulations.

vessel and to look in the icebox. . ." 410 So.2d at 156, it reversed because no consent was obtained to search the entire vessel and there was insufficient probable cause to justify said search.

It is unclear how the majority reached the finding that the evidence was insufficient to support probable cause. The dissent however, speaking through Justice Alderman correctly reasoned that the facts squarely placed this case either under the Carroll exception, or a search incident to a lawful arrest.

Respondents submit nothing in their arguments which refute the position tender in Petitioner's Brief on the

Merits that the search was valid under the aforenoted exceptions. In fact Respondents fail to specifically discuss any of the authorities which support Petitioner's justification for the search.

IV. Whether The Illegally Seized Evidence Could Have Been Admitted At Trial?

Respondents lastly assert that not only does the case concern a violation of the Fourth Amendment, "but also a violation of Article I, Section 12, of the Florida Constitution." (Respondents' Brief p. 33) Wainwright v. Stone, supra, controls adversely to Respondents' position.

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5. Petitioner has renumbered Respondents' Argument V to IV since Argument IV was initially discussed pp. 1-9.

CONCLUSION

The Florida Supreme Court's opinion in State v. Casal, supra failed to apply controlling decisions of this Court in its review of the warrantless search of the San Rafael. The search was valid as a search incident to a lawful arrest, probable cause existed under the Carroll exception and Officers Soli and Walker were authorized to conduct a safety inspection and registration check of said vessel. Based on the pleading, Petitioner would urge this Court to reverse the decision rendered in State v. Casal, supra.

Respectfully submitted,

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